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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
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ALEXANDRIA, VA 22314

EXAMINER

JACOBSON, MICHELE LYNN

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1 RECORD OF ORAL HEARING

2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

5
6 *Ex Parte* GUIDO SCHMITZ, HARALD HAGER, and HANS RIES

7 Appeal 2011-000663
8 Application 10/588,487
Technology Center 1700

9
10 Oral Hearing Held: October 13, 2011

11 Before TERRY J. OWENS, JEFFREY T. SMITH, and MARK NAGUMO,
12 *Administrative Patent Judges.*

13 APPEARANCES:

14 ON BEHALF OF THE APPELLANT:

15 JAY E. ROWE, JR., ESQUIRE
Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P.
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Alexandria, Virginia 22314

17 The above-entitled matter came on for hearing on Thursday,
18 October 13, 2011, commencing at 10:30 a.m., at the U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia, before
19 Timothy J. Atkinson, Jr., a Notary Public.
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P R O C E E D I N G S

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THE USHER: Calendar No. 8, Appeal No. 2011-000663,
Mr. Rowe.
JUDGE OWENS: Thank you.
MR. ROWE: I think my glasses were left here. Yeah. Good
morning.
JUDGE OWENS: Good morning.
JUDGE SMITH: Good morning.
MR. ROWE: These are the references that we need.
THE REPORTER: Okay. Thank you very much.
MR. ROWE: Okay. May it please the Board, my name is Jay Rowe
and I'm representing the Appellants in this case. And what we're dealing
with in this invention is a method for etching semi-conductor-type wafers
wherein in the normal method of processing, a wafer is coated with a mask.
JUDGE SMITH: Excuse me, Counselor?
MR. ROWE: I'm sorry?
JUDGE SMITH: Can you give us the Appeal Number that you're
discussing?
MR. ROWE: Yes, I apologize. This is 673.
JUDGE SMITH: Okay.
MR. ROWE: Is that --
JUDGE OWENS: We can do that. The first one on the list is the
other one.
JUDGE NAGUMO: It was 663, but --
MR. ROWE: Well, we can do that one.
JUDGE SMITH: No, that --

1 MR. ROWE: Let's stay in order. Sorry. Well, then I'm still me and
2 I'm still representing the Appellants, and in this case we're dealing with a
3 multi-layer laminate where we, in fact, are bonding an ethylene vinyl alcohol
4 layer with a perfluoropolymer layer. And we're dealing with an obviousness
5 rejection where the Examiner has taken three references.

6 We have Schmitz, Böer, and Jadamus. And basically, Schmitz
7 describes a polyamide ethylene vinyl alcohol combination. Jadamus
8 describes a perfluoropolymer or polyethylene combination. And no one of
9 the three references describes a specific laminate containing ethylene vinyl
10 alcohol laminated to a perfluoropolymer or a polyethylene polyolefin-type
11 composition.

12 So the gist of the Examiner's rejection for obviousness is based on
13 description in the Böer reference, wherein she cites in column 2, beginning
14 at line 7, and I'll just quote this. This is in the Appeal Brief. It's in the Reply
15 Brief. But I think this is very, very important where Böer says, "A typical
16 approach to bonding, for example, polyester and polyamide layers would be
17 to use an adhesion promoter consisting of a mixture of polyamide and
18 polyester."

19 So just keep in mind that the combination that this reference is
20 specifically directed to is polyamide laminate to polyester, and this is where
21 the Examiner stops in her citing. She appears to ignore the next paragraphs
22 which go on to say that in this particular case just a simple mixture of the
23 two materials is not effective. And the reference goes on to describe, you
24 have a brittle combination. And as a result of this and the various problems
25 that are associated with it, and I go down now to line 26, "However, the
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1 preparation of the polyamide-polyester block copolymer of this type is not
2 easy and requires the addition of auxiliaries or catalysts."

3 So what the reference has gone to is, look, if you can't mix the two
4 easily, what you need to do is to form some sort of a block copolymer
5 combination in order to overcome the problems that are associated with the
6 direct mixture. And it says "This is a difficult thing to do." And he goes
7 down in line 31, "Precise control of the end groups is necessary in order to
8 ensure that the appropriate end groups are present in sufficient
9 concentration." And then, in line 36, "The production of adhesion promoters
10 of this type therefore requires considerable effort." And then --

11 JUDGE OWENS: Suppose all that teaching weren't there, do you
12 think the Examiner would have a prima facie case of obviousness?

13 MR. ROWE: No, because the reference is directed specifically to a
14 polyester-polyamide combination, and there is no indication whatsoever in
15 that reference that would say that which the Examiner citing the reference
16 teaches is actually taught. And I would point out to you that the reference is
17 teaching that in order to laminate a polyester to a polyamide the intermediate
18 laminate layer would contain both polyester and polyamide. And what the
19 Examiner is simply using this -- remember, the invention is directed to
20 perfluoropolymer or polyolefin laminated to an ethylene vinyl alcohol. And
21 so, if you were to follow the reasoning that the Examiner cites in this
22 reference, your intermediate layer would, therefore, be a mixture of ethylene
23 vinyl alcohol, and either the perfluoropolymer or the polyolefin, which is not
24 the case.

25 And then, the very last paragraph before the summary, "Composites
26 comprising other materials are also known. But due to the above-mentioned

1 incompatibility of most polymer materials, similar types of individually-
2 matched adhesion promoters are usually required. And those individually-
3 matched adhesion promoters come about due to a great deal of effort, which
4 requires a great deal of experimentation."

5 This reference does not enable one to make any such type of
6 composite material. It really invites experimentation, and I don't believe the
7 invitation to experiment can be the basis of a support for an obviousness
8 rejection. So on that fact, alone, I believe this rejection should be reversed.

9 JUDGE SMITH: I have no questions.

10 JUDGE OWENS: Do you have any questions, Mark?

11 JUDGE NAGUMO: No.

12 MR. ROWE: And that's --

13 JUDGE OWENS: No more questions.

14 MR. ROWE: Okay.

15 (Whereupon, the proceedings, at 10:40 a.m., were concluded.)
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